

REMARKSI. Status of Claims

Claims 52-57, 60-62 and 67-86 are pending in the present application. Claims 67-83, 85 and 86 have been allowed.

II. Claim 84

Claim 84 has been objected to as depending on a rejected base claim. Claim 84 has been rewritten in independent form and thus should be allowable.

III. Section 102/103 Rejections

Claims 52-54 have been rejected under 35 USC §102 over Andersen '933; Claims 55-56 have been rejected under 35 USC §103 over Andersen '933; Claims 55-57 and 60-62 have been rejected under 35 USC §103 over Andersen '993 in view of Canipe '288. These rejections are respectfully traversed and each of the rejections will now be addressed in turn.

A. Claim 52

Claim 52 includes limitations:

"operating in an automatic activation mode
whereby the EAS system is automatically activated in

response to a signal from the data reader of good read of a product code;

operating in a manual activation mode whereby the EAS system is manually activated by action of an operator;

detecting a manual activation of the EAS system to deactivate an EAS tag; and

storing an indication that a manual activation, as distinguished from an automatic activation, of the EAS system has been detected."

Though Andersen '933 discloses at paragraph 0032 that "deactivator 300 also includes a counter for tracking and maintaining in memory the number of deactivations occurring within a given transaction", there is no indication that the Andersen '933 system tracks or otherwise stores an indication that a manual activation, as distinguished from an automatic activation, of the EAS system has been detected. The Andersen '933 system only tracks/counts deactivations (evidently any kind) without distinguishing between automatic and manual.

In the Office Action it was indicated:

"As manual activation is performed to deactivate a tag, it is detected. An indication of the detected manual activation is interpreted as being taught through the counter (paragraph [0032]) which records activation of the EAS system to deactivate tags. This is interpreted as storing an indication of the detected manual

activation of the EAS system because manual activation is performed, it is logged and stored, thus storing an indication."

By the above statement, the Office Action presumes that Andersen '933 discloses storing an indication of manual activation. This presumption is traversed. Though Andersen '933 discloses that data from the item UPC code may be obtained manually or via a scanner (see, Andersen '933 at Par. 0035), there appears to be no disclosure in Andersen '933 of manual EAS deactivation, no distinction between manual and automatic deactivation, and no separate treatment of manual and automatic deactivation relative to the logging methods. Thus, this rejection is traversed because anticipation cannot be made absent each limitation of the claim being present in a single cited reference. Moreover, since the cited limitation is not disclosed in Andersen '933, it is submitted that a *prima facie* case of obviousness cannot be made as to Claim 52. Therefore it is submitted that Andersen '933 fails to disclose these elements and thus Claim 52 is non-obvious and allowable over Andersen '933.

B. Dependent Claims 53-56

Claims 53-56 should be allowable in part as depending upon an allowable base claim. Additional distinguishing aspects of these claims will be set forth in the following.

Claim 53 includes the step of "transmitting an indication that a manual activation, as distinguished from an automatic activation, of the EAS system has been detected." As discussed above with respect to Claim 52, Andersen '933 does not distinguish between manual or automatic activation of the EAS system but is only concerned with counting the number of deactivations. Thus Andersen '933 does not disclose transmitting an indication of the detected manual activation, as distinguished from an automatic activation, as in Claim 53.

Claim 54 includes "the limitation of storing and indication of the detected manual activation . . . in response to receiving the transmitted indication." By action of this limitation, the indication of the detected manual activation, as distinguished from an automatic activation, may be stored automatically by operation of receiving the transmitted indication. Andersen '933 discloses only counting the total number of deactivations, without distinguishing between manual and automatic, and thus does not disclose such a step.

As to Claim 55, in the Office Action it is asserted that Andersen '933, "Though silent to storing an identifier of the operator in association with the stored indication of the manual activation, it would have been obvious to one of ordinary skill in the art to store an identifier of the operator who is logged on/performing the transaction, in for record keeping purposes/accountability." Then as to Canipe '288 the Office Action asserts "One would have been motivated to do this for accountability/record keeping. An identifier of an operator is an obvious expedient to denote the specific operator." But Claim 55 includes the step of "identifying an operator logged into the POS system at a time the manual activation of the EAS system is detected." Neither the step nor its motivation is disclosed in Anderson '933 or Canipe '288 and thus it is submitted that Claim 55 provides further distinguishing features for nonobviousness and allowability. This rejection is again traversed and it is requested that a reference be cited disclosing the limitation, or the rejection be removed.

MPEP § 2144.03.

Claim 56 includes the limitation of determining a date and time when the manual activation, as distinguished from an automatic activation, of the EAS system is detected; and storing

the determined date and time in association with the stored indication of the manual activation. Canipe '288 (at Par. 0047) discloses logging the transaction "to track items that passed through the fixed POS station without having an active EAS tag deactivated by the station." Neither Andersen '933 nor Canipe '288 discloses storing date and time of manual activation, as distinguished from an automatic activation. This rejection is again traversed and it is requested that a reference be cited disclosing the limitation, or the rejection be removed.

MPEP § 2144.03.

C. Claim 57

In rejecting Claim 57, the Office Action asserts that Canipe '288 "teaches logging tags the required manual deactivation (paragraph [0046]). This is interpreted as a data code corresponding to a predetermined machine readable code (coded data corresponding to the barcode read)." This "interpretation" of Canipe '288 is traversed. There is nothing in Canipe Par. 0046-47 of transmitting an indication of a manual deactivation via a data code corresponding to a predetermined machine readable code. Rather than argue the point, Claim 57 has been amended to clarify that "the indication of the manual

deactivation comprising a data code in the form of a predetermined machine readable optical code data." Par. 0049 of Canipe indicates "A signal representative of the EAS tag status may be transmitted by the EAS/Scanner for receipt by the processor", but there is no description here as to the form of this signal, and thus it is submitted that Canipe '288 does not suggest "transmitting an indication of the manual deactivation . . . in the form of a predetermined machine readable optical code data" as in Claim 57.

Moreover, Canipe '288 does not transmit information at all with respect to successful manual deactivation (as opposed to automatic deactivations) but only appears interested in failed deactivations. And there is no suggestion to modify Canipe '288 to reach the combination of Claim 57. In the method of Claim 57, it is advantageous that the data reader can transmit this information of successful manual deactivation using the same type of data code that it is already using for data reading, namely in machine readable optical code data not only for the product codes as normally transmitted but also for this indication of successful manual deactivation.

Therefore it is submitted that Canipe '288 fails to disclose several limitations in the method of Claim 57 and thus

Canipe '288 fails to establish a *prima facie* case of obviousness and it is submitted that Claim 57 is not nonobvious and allowable.

D. Dependent Claims 60-62

Claims 60-62 should also be allowable in part as depending upon an allowable base claim. Certain of these claims will be further discussed in the following.

Claim 60 includes the limitation "wherein said predetermined machine readable optical code data comprises a specially reserved universal product code." And (from Claim 57) "the indication of the manual deactivation comprising a data code in the form of a predetermined machine readable optical code data." Thus according to Claim 60, a specially reserved universal product code is used for the indication of manual deactivation. The Office Action asserts "the Examiner notes that UPC's [that] are unique/special to each item are known an[d] conventional in the art as a well accepted way identify to items to be read." However, Claim 60 specifies using the UPC code not as a way to identify items to be read, but as a form of data transmission of certain occurrences, namely indication of a manual deactivation.

IV. Conclusion

Therefore it is respectfully submitted that Claims 52-57, 60-62, 67-86 are allowable and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

Dated: July 23, 2008

By: /JohnARafter/
John A. Rafter, Jr.
Reg. No. 31,653

Customer No. 33451
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Telephone: (503) 224-3380
Facsimile: (503) 220-2480
Attorney Docket No. 51306/889:1